United States Court of Appeals

for the Second Circuit



APPELLANT'S APPENDIX

74-2390

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- X

ZACHARY MORGAN :

Plaintiff-Appellant :

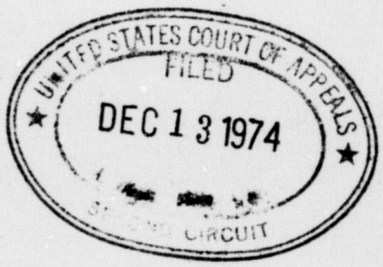
-against- :

ERNEST MONTAYNE, Warden of Attica State Prison, Correction Officer Steggs, et. al. :

Defendants-Appellees :

- X

Bp/s



APPENDIX FOR PLAINTIFF-APPELLANT

On Appeal from an Order of
the United States District Court for
the Western District of New York, Dismissing
a Civil Rights Act Complaint

GRETCHEN WHITE OBERMAN
Counsel for Plaintiff-Appellant
277 Broadway
New York, New York
267-7637

H

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CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

C. Form No. 106 Rev.

Civ-1973-451

TITLE OF CASE	ATTORNEYS
ZACHARY MORGAN #28565	For plaintiff: pro se
v	
ERNEST L. MONTANYE, Warden of Attica State Prison, CORRECTIONAL OFFICER STEGGS, et al	For defendant: Louis J. Lefkowitz

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
S. 5 mailed	Clerk					
S. 6 mailed	Marshal					
asis of Action: Civil Rights Act	Docket fee					
	Witness fees					
tion arose at:	Depositions					

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Civ-1973-451 Zachary Morgan v. Ernest L. Montanye et al.

DATE 1973	PROCEEDINGS	Date Order Judgment N
Oct. 18	Filed petition.	
18	" decision and order allowing filing in forma pauperis: correctional officials are ordered to show cause why petitioner should not be allowed to proceed further in forma pauperis ret. 10-4-73.-Curtin, DJ Notice & copies to petr. & Lefkowitz.	F-144
18	JS 5 made	
10	Filed affidavit in opposition.	
15	~~Filed Petitioner's reply~~	
15	Filed order directing Petr. to submit affidavit to Ct. by mail setting forth the facts to support his claims ret. 1-31-74-Curtin, DJ Notice & copies to Petr. & Louis J. Lefkowitz	F-14
~~Dec.~~ 10	~~Filed Petitioner's affidavit & exhibits~~	
Dec 10	Filed order dismissing petrs. application, permission to appeal in forma pauperis is also denied, with the qualification that petr. may file with the Clerk notice of appeal w/o payment of filing fees-Curtin, DJ Notice &copies to petr. & Louis J. Lefkowitz	F-153
10	JS 6 made	
21	Filed Petitioner's Notice of Appeal (cy. mailed to Mr. Lefkowitz, Bflo. with copy of CCA Form C and to Clerk, CCA with copy of docket entries and orig. Form C)	
Feb. 8	File sent to U.S. Court of Appeals	
Mar. 1	File returned from CCA	
1	Filed copy of order of CCA granting petitioner's motion to appeal in forma pauperis and for assignment of counsel	
1	Original papers, docket entries and Clerk's certificate mailed to Clerk, CCA	

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B CLOSED appeal

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ZACHARY MORGAN,

Petitioner

-vs-

ERNEST L. MONTANYE, Warden of Attica State Prison, CORRECTIONAL OFFICER STEGGS, et al.,

Respondents

Petitioner pro se.

Petitioner, currently confined at the Attica Correctional Facility, has submitted a communication which will be considered a request for relief under the Civil Rights Act (42 U.S.C. §1983; 28 U.S.C. §1343).

Filing in forma pauperis is permitted.

Petitioner alleges that on July 14, 1973 he received a letter from his lawyer that was opened and censored by Attica officials outside of his presence. He also alleges that on July 23, 1973 petitioner received a copy of a brief from his lawyer. The brief was opened and petitioner alleges pages were removed by Attica officials.

Correctional officials are ordered to show cause on October 4, 1973 at 10:00 A.M., in Part II of this court at Buffalo, New York, why petitioner should not be allowed to proceed further in forma pauperis. Petitioner need not be present at that time.

Answering papers shall be served on petitioner and he shall have twenty days to respond in writing if he so desires.

So ordered.

JOHN T. CURTIN
United States District Judge

DATED: September 18, 1973

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ZACHARY MORGAN,

Petitioner

-vs- Civil 1973-451

ERNEST L. MONTANYE, Warden of Attica State Prison, CORRECTIONAL OFFICER STEGGS, et al.,

Respondents

Petitioner pro se.

In response to this court's order of September 18, 1973, respondents have submitted affidavits of Stephen Seeley and Harold Steggs, Correction Officers at the Attica Correctional Facility. Petitioner has submitted a reply.

Respondents' affidavits state that the policy of the Attica Facility is to open incoming legal mail only in the presence of the inmate. Officer Seeley states that if a legal letter was opened by prison officials outside of the presence of the inmate, it was done so inadvertently. Officer Steggs says he does not remember the incident. Regarding the legal brief, correctional

officials allege that this material was opened in the presence of the inmate on July 23, 1973.

Petitioner's answer to respondents' affidavits states that he has proof that the mail was opened outside of his presence and that the legal brief was tampered with. Petitioner is to submit an affidavit to the court, by mail, no later than January 31, 1974, setting forth the facts to support these claims. Any other material petitioner wishes to bring to the court's attention may be sent by that date.

So ordered.

JOHN T. CURTIN
United States District Judge

DATED: January 15, 1974

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ZACHARY MORGAN,

Petitioner

-vs- Civil 1973-451

ERNEST L. MONTANYE, Warden of Attica State Prison, CORRECTIONAL OFFICER STEGGS, et al.,

Respondents

Petitioner pro se.

In response to this court's order of January 15, 1974, petitioner has submitted affidavits and exhibits which included envelopes from F. S. Polestino, who petitioner alleges is his lawyer.

Respondents contend that if the envelopes were opened before they were given to petitioner, they were opened by mistake. The envelopes are marked with a return address from St. John's University School of Law. Because of the return address, the court finds it is possible for respondents to be confused as to whether or not the correspondence here in question was legal correspondence. At any rate, the court finds that

respondents' conduct here was constitutionally permissible under Sostre v. McGinnis, 442 F.2d 178 (2d Cir. 1971), and thus petitioner's application must be dismissed. If petitioner wishes his exhibits returned, he should so inform the court.

Permission to appeal in forma pauperis is also denied, with the qualification that the petitioner may file with the Clerk of the United States District Court, United States Court House, Buffalo, New York, a notice of appeal, without the payment of filing fees.

Further requests for permission to appeal in forma pauperis should be directed, on motion, to the United States Court of Appeals for the Second Circuit, Foley Square, New York City, in accordance with the requirements of Rule 24(a) of the Federal Rules of Appellate Procedure.

So ordered.

John T. Curtin

JOHN T. CURTIN
United States District Judge

DATED: June 10, 1974

STATE OF NEW YORK

DEPARTMENT OF CORRECTIONAL SERVICES

THE STATE OFFICE BUILDING CAMPUS

ALBANY, N. Y. 12226

RUSSELL G. OSWALD
COMMISSIONER

December 14, 1972

ADMINISTRATIVE BULLETIN #20 AMENDED

TO: SUPERINTENDENTS OF CORRECTIONAL FACILITIES, DIRECTOR OF STATE HOSPITAL, CENTRAL OFFICE GROUP AND DIVISION HEADS, PAROLE AREA DIRECTORS AND INSTITUTIONAL OFFICES

FROM: RUSSELL G. OSWALD, COMMISSIONER Russell G Oswald

RE: REVISED RULES GOVERNING THE CORRESPONDENCE PROGRAM FOR INMATES

This Bulletin amends Administrative Bulletin #20 issued January 31, 1972, and presents revised rules which now govern the correspondence program for inmates.

Pending the issuance of the revised Inmates' and Employees' Rule Books, appropriate dissemination of the rules and procedures contained herein shall be made.

Departmental objectives include the re-socialization of inmates and assistance in the solution of their personal and legal problems. Accordingly, correspondence and visits with family members, friends, business associates, former and prospective employers, governmental officials and counsel may contribute to the good morale and treatment of inmates, and future good adjustment in the facility and in the community.

Pursuant to the on-going policy of effecting needed review and revision of inmate rules, the revised rules governing the correspondence program for inmates are hereby prescribed:

Introduction: You are encouraged to maintain contact by correspondence with your family, friends and others., We want to help you to do so. Therefore, a minimum number of positive rules are necessary, and they are set forth to guide the participation in the correspondence program of all concerned. This includes you, those who correspond with you, and the correctional facility employees.

1. You may correspond with anyone through regular channels, and in keeping with all rules governing the correspondence program.

2. Correspondence with specific persons will be subject to identification by you of the individual by name and address, purpose of the correspondence, and verification from the individual that he or she desires to correspond with you.

You may want to correspond from time to time or on special occasions with family members, friends, former or prospective employers, members of the clergy, governmental officials, an attorney or a representative of the news media. Such correspondence will be subject to the rules governing the correspondence program.

Special permission must be obtained by you from the Superintendent for correspondence with unrelated persons who have maritial ties, crime partners, inmates in other facilities in this or other states, and persons currently on probation or parole.

3. The envelope and contents thereof of outgoing and incoming correspondence will be inspected to ascertain that there is nothing present therein which jeopardizes the safety and security of the facility.

4. The facility will provide postage for you for one letter per week. You must pay the postage for your other correspondence.

5. A record of your incoming and outgoing correspondence will be maintained.

6. Your correspondence must be written on stationery provided or authorized by the facility for such purpose.

7. If you are unable to read or write, a staff member or an inmate may assist you in regard to your correspondence.

8. Incoming and outgoing correspondence should be in the English language. Correspondence not in the English language will be processed as rapidly as practical.

9. Special correspondence to public officials and attorneys: You may write to the President of the United States, Members of Congress, Governor of the State, Members of the State Legislature, State Commissioner of Correctional Services, Chairman

Student Lawyers

The envelope and letter will be examined prior to mailing to insure absence of contraband. The letter will not be read or censored. Incoming letters from the above will be opened and examined in your presence to insure the absence of contraband. The incoming letter will not be read or censored. For your information censor means to delete some or all of the contents of a letter.

10. In emergencies relating to the death or critical illness of your family members, you may send and receive telegrams at your expense if funds are available, and at State expense if you are without funds.

11. While you are encouraged to correspond regarding your participation and progress in authorized correctional programs, family matters, future employment and residence plans and legal problems, the following materials or contents are not authorized to be in correspondence: statements which are obscene or lewd, contain threats, imply blackmail, imply plots to escape, discuss criminal activities, contain codes to circumvent understanding of contents, plots to use overt action to overthrow lawful authority, solicitation of personal property or funds, and plans to evade rules of the facility.

12. When your letter and/or the contents thereof are found to be contrary to the rules governing correspondence, the letter will be returned to you with notification as to the reason; when it is found that the incoming letter and/or contents therof are contrary to the rules governing correspondence, the letter will be returned with explanation to the sender, if known; otherwise it will be placed in your file.

13. If a person receiving a letter from you rejects the correspondence, you will be notified that such rejection is to be respected. You may refuse to correspond with any person.

14. Violation of rules governing the correspondence program may result in cancellation of the correspondence between the parties involved.

15. You are authorized to possess and take with you on transfer or release all of your personal correspondence.

Some procedural guidelines regarding the correspondence program are set forth for the staff:

Reference Rule 1 and Rule 5: An approved correspondence list per se is no longer necessary or to be maintained. However, in conformance with Rule 5 a record of correspondents will be maintained. There is no limit on correspondence, incoming or outgoing.

Reference Rule 2: Upon an inmate's application to correspond with a person, a form letter should be sent to the person to determine relationships or associations with the inmate, whether the person desires to correspond with the inmate, and to inquire regarding the factors in the third paragraph of Rule 2.

Forms and procedures for their use will be provided to all facilities by the Office of the Deputy Commissioner for Program Services.

Reference Rule 3: Authorization is hereby given to limit the review of incoming and outgoing mail to inspection only rather than to reading of all mail. The present rules covering special correspondence are in no way effected by this revision.

Authorization is given also for both inspection and reading of incoming and outgoing correspondence, other than special correspondence of selected inmates to insure the safety and security of the facility. This latter authorization by memo to inmate's file specifying the necessity to do this as related to insuring the safety and security of the facility is to apply to a limited number of inmates designated specifically by the Superintendent or his designated representative. Such authorizations are to be reviewed periodically.

Reference Rule 5: Continue to use the Departmental record form for this purpose (Correspondence Record Card-Form I-18).

Reference Rule 6: The present Departmental inmate's stationery form may continue to be used (Departmental Letterhead-Form I-21).

Reference Rule 8: In view of Rule 3 and reference thereto, correspondence in a foreign language will not be subject to reading unless such correspondence is that of a specific inmate whose correspondence has been designated for review per reference 3 above.

Reference Rule 9: Each inmate will be instructed that the Superintendent's form letter or message to the addressee will be inserted in the same envelope together with his confidential correspondence. In order to effect this procedure, the inmate will bring his confidential letter to a responsible employee, as designated by the Superintendent, who shall place the Superintendent's form message inside the envelope with the inmate's letter. This procedure shall be accomplished in the presence of the inmate and without reading or censoring his correspondence. The envelope will then be sealed by the inmate himself.

Reference Rule 10: All legal correspondence (inmate petitions, court litigation, letters to judges and attorneys) shall bear the inmate's NYSIIS number on the lower lefthand corner of the envelope.

rf

I hereby certify that a copy of
the within was served by
mail this date on the
attys for the appellee
12-13-74 D W Oberman